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RECENT CASES

CARRIERS—STIPULATION IN PASSENGER TICKET LIMITING LIABILITY FOR LOSS OF BAGGAGE—NEGLIGENCE.—*COOPER v. NORFOLK, SOUTHERN RY. CO. ET AL.*, 77 S. E. REP. (N. C.), 339.—*Held*, that a stipulation in an intra-state passenger ticket that "baggage liability is limited in value, unless a greater value has been declared and excess charges paid," is invalid, where the carrier was negligent.

In general there is no distinction between the baggage of a passenger and ordinary goods, as to the rights of parties to enter into contracts limiting the liability of the carrier. *Hutchinson on Carriers*, 3rd Ed., §1297. The decision in the principal case is in harmony with the rule obtaining in most jurisdictions that a carrier may limit its liability for baggage by stipulation in a passenger ticket, except for losses due to its own negligence; *Williams v. Central Railroad of New Jersey*, 93 App. Div. (N. Y.), 582; *Thomas v. Southern Ry.*, 131 N. C., 590; *Jacobs v. C. R. of N. J.*, 208 Pa., 535; although some require that a reduced fare or other consideration be given. *Robert v. Chi. & Alton R. Co.*, 148 Mo. App., 96. The stipulation must be reasonable; *Weinberger v. Compagnie Generale*, 146 Fed., 516; *Rose v. Northern Pacific Ry.*, 35 Mont., 70; and notice must usually be brought home to the passenger; *C. R. of N. J. v. Wiegand*, 75 Fed., 370; *Black v. A. C. Line Ry.*, 82 S. C., 478; although it may be presumed. *Aiken v. Wabash Ry.*, 80 Mo. App., 8; *Jacobs v. C. R. of N. J.*, *supra*. Notice will not be presumed where the conditions intended to limit the carrier's liability are printed on the back of the ticket. *Hutchinson on Carriers*, §1299. Some courts however allow a limitation of liability for loss caused by negligence. *Rose v. N. P. Ry. supra*; *Westhall v. C. R. of N. J.*, 79 N. J. L., 87; *Tewes v. North German Lloyd Steamship Co.*, 186 N. Y., 151. In a few instances, as where a free pass is given, a carrier may wholly exempt itself from liability; *Holly v. Southern Ry.*, 119 Ga., 767; even for the felonious acts of its servants. *Marriott v. Yeoward Bros.*, 2 K. B. (Eng., 1909), 987; *contra*, *Hutto v. Southern Ry.*, 75 S. C., 295. In Iowa, Texas and Virginia, by statute, a carrier cannot limit its common-law liability. *Galveston, etc. Ry. v. Eales*, 33 Tex. Civ. App., 457; *C. & O. Ry. v. Beasley*, 104 Va., 788. Stipulations as to baggage are held not to apply to hand baggage. *Runyan v. C. R. of N. J.*, 61 N. J. L., 537; *Holmes v. Nor. Ger. L. S. S. Co.*, 184 N. Y., 280.

CHARITABLE SUBSCRIPTION — DONATION — ENFORCEMENT — CONSIDERATION.—*YOUNG MEN'S CHRISTIAN ASS'N. v. ESTILL*, 78 S. E. (GA.), 1075.—*Held*, that, as a general rule, a promise to donate money to a charitable purpose is gratuitous and unenforcible, unless some consideration therefor exists. But a consideration for a promise to donate money to a charitable corporation is supplied where the corporation, during the life of the promisor, and before a withdrawal of the promise, and in reliance on his promise, as well as that of others, expended money and incurred enforceable liabilities in furtherance of the enterprise the donors intended to

promote. The original gratuitous promise will thus be converted into a valid and enforceable contract.

A subscription is generally regarded as merely an offer to contribute toward the accomplishment of a proposed object, and being no more than an offer, it does not give rise to a contractual obligation until supported by a consideration. *Albany Presb. Church v. Cooper*, 112 N. Y., 517. Nevertheless, the meritorious purposes which are usually the object of subscriptions have led the courts in most cases to hold that subscribers' promises are enforceable. Different reasons have been given for holding the subscriber. If the work for which the promise was made has been done or liability incurred in regard to such work, on the faith of the subscription, consideration is found in that fact. *First Church v. Donnell*, 110 Ia., 5; *Richelieu v. Inter. Mil. Encamp. Co.*, 140 Ill., 248; *Cottage St. Church v. Kendall* 120 Mass., 528; 1 *Page on Contr.*, par. 298. See also, *Lasar v. Johnson*, 125 Cal., 549. While the cases that allow recovery on the ground of expenditures made, or work done, in reliance on the subscription, usually state the reason in terms of consideration, it has been held that the right of recovery is on the ground of an estoppel invoked against the promisor. *Beatty v. West, College*, 177 Ill., 280, 292; *Simpson College v. Tuttle*, 71 Ia., 596; *Kansas City School Dist. v. Sheidly*, 138 Mo., 672. Being merely an offer, it may be revoked any time before acceptance. *Beach v. First Church*, 96 Ill., 177; *Helpensteins Estate*, 77 Pa., 328. So, too, it lapses by the death of the subscriber, if the death occurs before there is an acceptance, and before a consideration is furnished. *Twenty-Third Street Baptist Church v. Connell*, 117 N. Y., 601; *In re Helfenstein*, *supra*. Then again, it has been held that the promise of each subscriber is supported by the promises of the others. *Christian College v. Hendley*, 49 Cal., 347; *Higert v. Trustees*, 53 Ind., 326. *Contra*. *Cottage St. Church v. Kendall*, *supra*; *Albany Presb. Church v. Cooper*, *supra*. Consideration for the subscriber's promise has also been found either in the express promise, or in what is regarded as the implied promise, of the promisee to carry out the purpose for which the subscription was made. *Barnett v. Franklin College*, 10 Ind. App., 103. This view has not met with judicial approval. *Johnson v. Otterbein University*, 41 Ohio St., 527, 531. The fact that others have been induced to subscribe has been held, in a few cases, to be a good consideration. *Hanson Trustees v. Stetson*, 5 Pick. (Mass.), 606, overruled in *Cottage St. Church v. Kendall*, *supra*; *Comstock v. Howd*, 15 Mich., 237; *Irwin v. Lombard Univ.*, 56 Ohio St., 9. Recovery is also allowed where the promisor expressly or impliedly requests that acts be done in furtherance of the purpose of the subscription, and they are performed pursuant to the request. *Union Semin. v. Brownell*, 34 N. Y., 379; *Keuka Coll. v. Ray*, 167 N. Y., 96; *Albany Presb. Church v. Cooper*, *supra*. A few cases hold that the object being meritorious and beneficial to the promisor, this benefit to him furnishes a good consideration for the promise. *Pitt. v. Gentle*, 49 Mo., 74, 77; *Comstock v. Howd*, *supra*. While in most cases there is a strong moral obligation to pay the promised subscription, there are but few cases where the subscription has been enforced explicitly on this

moral obligation consideration. *Caul v. Gibson*, 3 Pa. St., 416; *Hart's Estate*, 13 Phila. (Pa.), 226. In England a charitable subscription is not held to be binding. *In re Hudson*, 54 L. J. Ch., 811. The doctrine of the principal case illustrates the tendency of the courts to discover a technical consideration for the promise of the subscriber, and is in accord with the weight of authority.

CONTRACTS—DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE.—GREIL BROS. CO. v. MABSON, 60 SO. REP. (ALA.), 876.—*Dictum*, where performance of a contract becomes impossible subsequent to its making, the promisor is not thereby discharged, unless the impossibility of performance is caused by a change in the law, or by some action or authority of the government, in which case he is discharged.

While impossibility of performance was originally regarded as in no case an excuse for the non-performance of a contract, three well recognized exceptions to this general rule have arisen. A defense is admitted where, without fault of either party, performance has been prevented by the destruction of the subject matter of the contract, by a new law forbidding the act promised, or by sickness or death of the parties to a contract for personal services. 10 *Columbia Law Review*, 83; but see *Vogt v. Hecker*, 118 Wis., 306. Intervention of a foreign law is considered as impossibility of fact and no defense for non-performance of a contract. *Tweedle Trading Co. v. McDonald*, 114 Fed. Rep., 985. In Louisiana, by statute, interference by a fortuitous event excuses. *Romero v. Newman*, 50 La. Ann., 80; see also *Johnson v. Lyon*, 75 Mich., 477. In New York, impossibility is also an excuse when caused by the non-continuance of conditions essential to performance. *Buffalo & C. Land Co. v. Bellevue Land & C. Co.*, 165 N. Y., 247. Where the impossibility is caused by fault of the promisor he is not excused; *Frothingham v. Seymour*, 121 Mass., 409; and so a legislative enactment made at his instance is of no benefit to him; *Re Companies' Acts*, 117 L. T. R. 60 (Eng., Ch. D.); although voluntary dissolution of a partnership promisor has been held a valid excuse. *Bovine v. Dent*, 21 T. L. R., 82 (Eng., K. B. D.) Fault of the promisee makes impossibility resulting therefrom a discharge of the promisor from his obligation. *Vandegrift v. Cowles Eng. Co.*, 161 N. Y., 435. In addition to being opposed to the great weight of authority, the Alabama court's statement of law seems altogether too stringent. For further discussion of this topic see *Wald's Pollock on Contracts*, Williston's 3rd Ed., p. 518 *et seq*; and see article on "Discharge of Contracts" by Arthur L. Corbin in 22 *Yale Law Journal*, 531.

CONSTITUTIONAL LAW—POWER OF JUDICIARY—REVIEW OF ACTION OF GOVERNOR.—GERMAINE v. FERRIS, GOVERNOR, 124 N. W., 738.—*Held*, that the official action of a governor in removing, pursuant to authority conferred by law, the mayor of a city cannot be reviewed by *certiorari*, nor can mandamus issue, without an invasion by the judiciary of the execu-